

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

**RECEIVED**

SEP 19 2001

In re )  
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 GUAM CELLULAR AND PAGING, INC. )  
 )  
 Petition for Waiver of FCC Rule )  
 Section 52.15(g)(3)(i)(A) )

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

CC Docket No. 99-200 /

To: Common Carrier Bureau

**PETITION FOR WAIVER - EXPEDITED ACTION REQUESTED**

Guam Cellular and Paging, Inc. ("Guam Cellular" or "Petitioner"), by counsel and pursuant to Section 1.925 of the Commission's Rules, 47 C.F.R. §1.925, hereby requests a waiver of Section 52.15(g)(3)(i)(A), 47 C.F.R. §52.15(g)(3)(i)(A), and the Industry Numbering Committee's ("INC") six-months-to-exhaust criteria for central office code assignment.<sup>1</sup> Specifically, Petitioner requests the Commission to waive the requirement that Guam Cellular demonstrate it meets the six-months-to-exhaust evaluation criteria as part of its application for a new central office code in Guam. Guam Cellular requests one growth code in the 671 Numbering Plan Area ("NPA"). In order to receive expedited relief from its impending exhaustion of numbering resources, Guam Cellular respectfully requests that the Commission direct the North American Numbering Plan Administrator ("NANPA") to assign to Guam Cellular the requested growth code by November 1, 2001. In support of this Petition, the following is respectfully shown:

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<sup>1</sup> *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008, August 10, 2001, §4.2.1.

## **I. BACKGROUND**

Guam Cellular is a commercial mobile radio service provider (“CMRS”), licensed to provide cellular telecommunications and paging service in Guam and the Northern Mariana Islands on call signs KNKN828 and KNKQ367. Based on its internal projections, Guam Cellular will run out of numbers to assign to its cellular customers in early November of 2001. Based on conversations with NANPA representatives, Petitioner understands that it does not qualify for additional numbers under the INC six-months-to-exhaust evaluation criteria.

FCC Rule Section 52.15(g)(3)(i)(A) requires carriers submitting requests for growth numbering resources to submit a Months to Exhaust worksheet. Under the Central Office Code Assignment Guidelines implemented by the INC, a new central office code assignment will not be made unless the carrier shows that its numbering resources will be exhausted within the next six months.<sup>2</sup> INC’s guidelines were originally developed at the direction of the FCC, and FCC rules require the NANPA to perform its numbering administration functions in accordance with the guidelines.<sup>3</sup> Accordingly, the FCC has jurisdiction over this matter. Further, under FCC Rule Section 52.15(g)(3)(iv), a carrier whose application for a central office code is refused by NANPA may challenge the decision to the appropriate state regulatory commission. According to NANPA, the Public Utilities Commission of Guam does not oversee numbering resource matters. Therefore, this Petition for Waiver is appropriately before this Commission.

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<sup>2</sup>*See Id.*

<sup>3</sup> CO Code Guidelines at §1.0 n.1; In pertinent part, 47 CFR §52.13(d) states, “The NANPA . . . shall administer numbering resources in an efficient and non-discriminatory manner, in accordance with Commission rules and regulations and the guidelines developed by the INC and other industry groups pertaining to the administration and assignment of numbering resources. . . .”

Guam Cellular has a total of six NPA-NXXs assigned to it for wireless operations in Guam. However, of these six codes, three are available for use for its cellular operations and three are available for use by its paging operations only. Guam Cellular's paging and cellular services use a separate switch and terminal with two separate signaling protocols. Therefore, Guam Cellular cannot reassign numbers allocated for paging to its cellular customers. As shown below, Guam Cellular's three paging NXXs are substantially used and cannot be cleared for use by cellular subscribers.

In response to Guam Cellular's request for assignment of a new NPA-NXX, NANPA has advised that numbers assigned for paging operations must be considered even though they cannot be utilized for Guam Cellular's cellular operations. When all six codes are considered, Guam Cellular meets the FCC's 60% utilization criteria set forth in 47 C.F.R. §52.15(h) but does not meet INC's six-months-to-exhaust requirement.

## **II. ARGUMENT**

Based on its internal calculations, Petitioner will run out of cellular numbers on or about November 1, 2001. However, the Months to Exhaust Worksheet Petitioner must submit to NANPA as part of the application process does not accurately reflect this fact. This is because Guam Cellular's cellular and paging numbers must be grouped together on the Months to Exhaust Worksheet.

A Months To Exhaust Worksheet is attached hereto as Exhibit A. This worksheet shows a breakdown of the data for just the cellular codes and the data for the cellular and paging codes combined. As shown on the Worksheet at line A, although only 4,776 cellular numbers are actually available for assignment, when combined with the paging numbers it appears that 16,276 total numbers are available. 11,500 of these numbers are paging numbers and, as explained above, are

unable to be used for cellular operations.

In order to determine the months to exhaust, NANPA looks at the total of all numbers available for assignment and divides that number by the average monthly forecast. If such a calculation is performed for Guam Cellular's cellular numbers only, Guam Cellular meets the six-months-to-exhaust criterion because it will exhaust its numbers in 5.02 months. *See* line E. However, when cellular and paging numbers are grouped together, the calculation indicates that there are 17.13 months to exhaust. Accordingly, Guam Cellular asks for a waiver of the Months to Exhaust showing in order that Guam Cellular may be assigned an additional NPA-NXX for its cellular operations in Guam.

Waiver of the Commission's rules is appropriate where a party demonstrates that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.925(b)(3). The Commission also has discretion to waive its rules in cases where special circumstances warrant a deviation from the general rule and where such deviation serves the public interest or where there is good cause to do so.<sup>4</sup>

The underlying purpose of the rule would not be served by its application in the instant case. The Commission's numbering resource rules are intended, in part, to prevent the building up or

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<sup>4</sup>*Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). 47 C.F.R. §1.3.

stockpiling of numbers by carriers.<sup>5</sup> The rules are used to verify a carrier's need for growth numbering resources.<sup>6</sup> Guam Cellular has the requisite need. Its cellular business is growing quickly and it is unable to use available paging numbers to meet the demand for cellular service due to unavoidable technological reasons.

"Carriers that cannot meet the requirements for receiving growth numbering resources, but can demonstrate an actual need for additional numbering resources, may seek a waiver of [the Commission's] rules."<sup>7</sup> As explained herein, Guam Cellular has a genuine need for additional numbering resources in order to continue providing cellular service to consumers in Guam.

Another purpose of the Commission's rules on numbering resources is to conserve numbers in regions where numbers are likely to become scarce. However, Guam is not facing any numbering resource problems. Guam is a rural service area with a low population density. The NPA in Guam is not in jeopardy.

Grant of this waiver is in the public interest. First and foremost, Guam Cellular provides valuable service to the community of Guam. Wireless telephony is widely recognized to provide vital health and safety communications service to the community of Guam. For the months of May and June 2001, Guam Cellular activated close to 4,000 units. Grant of this waiver will enable Guam Cellular to provide a service which is in great demand on the island of Guam. Failure to grant the waiver would be contrary to the Commission's holding that numbering rules should "not be applied

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<sup>5</sup>*Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (March 2000), 7615-6.

<sup>6</sup>*Id.*

<sup>7</sup>*Numbering Resource Optimization, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 306, 380.

in such a manner as to deprive customers of their choice of carriers from whom to purchase service upon request.”<sup>8</sup> Further, this waiver raises substantial health and safety concerns, since many consumers obtain cellular service for health and safety reasons. No other party will be prejudiced by the grant of the waiver, but consumers in Guam will be harmed by its denial.

Failure to grant the waiver would cause significant harm to the business operations of Petitioner. The Commission has stated that one of its chief goals in carrying out its statutory mandate is, “to ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications marketplace.”<sup>9</sup> Guam Cellular is a small company licensed to serve only the Guam and Northern Mariana Islands RSAs. While Guam Cellular provides both cellular and paging services, cellular is by far more critical to the success of Guam Cellular’s business. Guam Cellular is currently experiencing little to no growth in its paging activations, while its cellular activations continue to grow steadily. Without new numbers, Guam Cellular will not be able to activate additional units on its cellular network unless or until other cellular units are deactivated. Such a result would be extreme and inequitable.

The technological barrier which precludes Guam Cellular from using paging numbers for cellular service is as follows: Petitioner’s cellular and paging services operate on separate networks. Guam Cellular’s cellular network uses a Motorola switch. Calls are handled on two-way trunks using SS7 Common Channel Signaling protocol. Guam Cellular’s paging system uses a Glenayre

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<sup>8</sup>*In the Matter of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, Order*, 14 FCC Rcd 17467, 17469.

<sup>9</sup>*Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (March 2000).

terminal. Calls are handled on in-bound trunks using the Wink Start, Multi-Frequency Signaling protocol. Due to the separate and distinct nature of these two systems, the administrative burden of re-routing paging numbers to cellular subscribers would be extreme and unreasonable for both Guam Cellular and the local exchange carrier, Guam Telephone Authority ("GTA"). GTA, which provides the trunks for Guam Cellular's cellular network, would have to take numbers currently programmed to operate on Guam Cellular's paging system and re-route them to function on Guam Cellular's cellular network. The work associated with this action, also referred to as number translation, would be extraordinary due to the fact that the amount of contiguous numbers Guam Cellular has available is very limited. Out of the 30,000 numbers allocated for paging, the largest contiguous block is nineteen numbers. This means that GTA would have to take the group of nineteen numbers (or less in most cases) and complete the number translation process just for that group and continue the same process until it is completed for all 30,000 numbers. The process would be exceedingly time consuming and expensive and would have no concomitant public benefit because the NPA in Guam is not in jeopardy.

Grant of this waiver request would be consistent with the Commission's action in other proceedings. For example, the Commission ordered NANPA to release additional codes to American Cellular Corporation ahead of schedule when it demonstrated it would be without numbers to provide service to new customers within the 66-day period required to activate a central office code.<sup>10</sup> Similarly, the Commission concurred with the New York State Department of Public Service in holding that Sprint PCS adequately demonstrated a genuine and immediate need for

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<sup>10</sup>Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administrator, dated April 7, 1999 (DA 99-663).

numbering resources in advance of the assignment schedule for the 516 NPA rationing plan.<sup>11</sup> In another case, the Commission ordered NANPA to release initial central office codes to AT&T Wireless ahead of the normal assignment schedule when the carrier was threatened with being unable to timely commence service to customers.<sup>12</sup> Further, the Commission has held that where carriers cannot serve customers because they do not have numbers, or where carriers are forced to use extraordinary and unreasonably costly measures to obtain numbers in order to provide service before implementation of new area codes, a state should work with the code administrator to ensure that those carriers have access to NXXs outside of the parameters of the rationing plan.<sup>13</sup> Accordingly, the Commission has repeatedly recognized that where a carrier faces numbering exhaust concerns which threaten its ability to provide service, exceptions to the growth resource requirements and normal resource allocation plan may be warranted. As explained herein, Guam Cellular is facing the imminent exhaust of its cellular numbering resources and requires immediate relief.

### **III. EXPEDITED ACTION IS NEEDED**

Guam Cellular seeks expedited action because it will run out of numbers for new activations at the beginning of November, in approximately six weeks. The need for expedited action is due to

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<sup>11</sup>Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administrator, dated March 12, 1999 (DA 99-505).

<sup>12</sup>Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau to Ronald R. Conners, Director, North American Numbering Plan Administrator, dated June 6, 2000 (DA 00-1247).

<sup>13</sup>*See Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 19009, 19039 (1998).



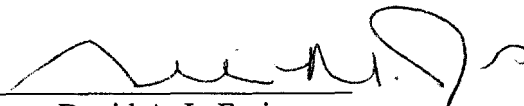
circumstances beyond its control. Guam Cellular has been working with NANPA since July to obtain additional numbers. Based on recommendations of NANPA staff, on August 21, 2001, Guam Cellular applied for and obtained a new Operating Company Number ("OCN") and subsequently applied for additional numbers using that OCN. More recently, NANPA unexpectedly advised Guam Cellular it will be unable to receive additional codes under its new OCN, and directed Guam Cellular to request a waiver from the FCC. Guam Cellular has filed this Petition at the earliest possible date pursuant to NANPA's most recent recommendation.

#### **IV. CONCLUSION**

For the reasons set forth above, Petitioner respectfully requests the Commission to waive the requirement that Guam Cellular demonstrate it meets the six-months-to-exhaust criteria as part of its application for a new central office code in Guam, and Petitioner respectfully requests that the Commission direct NANPA to assign to Guam Cellular the requested codes by November 1, 2001.

Respectfully submitted,

**Guam Cellular and Paging, Inc.**

By 

David A. LaFuria  
Allison M. Jones

Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered  
1111 Nineteenth Street, N.W., Suite 1200  
Washington, D.C. 20036  
(202) 857-3500  
September 19, 2001

## **EXHIBIT A**

**CO CODE ASSIGNMENT**  
**MONTHS TO EXHAUST CERTIFICATION WORKSHEET - TN Level<sup>1</sup>**  
 (Worksheet to be used for Requests for Additional Codes for Growth)

Date: Aug 3, 2001 Company Name: GUAMCELL Communications, Inc.

Rate Center: Agana cellular  $\downarrow$  paging  $\downarrow$

NPA(s)-NXXs included in growth calculation<sup>2</sup>: 671-678, 671-688, 671-689 671-476, 671-720, 671-721

Signature of Authorized Representative of Code Applicant: N Petrucelly

Title: System Engineer Telephone No.: (671) 649-7243 FAX No.: (671) 646-0627

A. Telephone Numbers (TNs) Available for Assignment (See Glossary<sup>3</sup>): 4,776 cellular + 11,500 paging = 16,276

	Month #1	Month #2	Month #3	Month #4	Month #5	Month #6	Month #7	Month #8	Month #9	Month #10	Month #11	Month #12
B. Previous 6-month growth history <sup>4</sup>	<u>724</u>	<u>1,905</u>	<u>387</u>	<u>1,768</u>	<u>2,129</u>	<u>654</u>						
C. Forecast – Next months 1-12 <sup>5</sup>	<u>1,200</u>	<u>1,100</u>	<u>900</u>	<u>850</u>	<u>850</u>	<u>800</u>	<u>800</u>	<u>750</u>	<u>750</u>	<u>750</u>	<u>700</u>	<u>700</u>
D. Average Monthly Forecast (Sum of months 1-6 Part C above divided by 6):	<u>950</u>											

E. Months to Exhaust<sup>6</sup> =  $\frac{\text{Telephone Numbers (TNs) Available for Assignment (A)}}{\text{Average Monthly Forecast (D)}}$  =  $\frac{5.02}{17.13}$  Cellular  
Both

F. Utilization Level<sup>7</sup> =  $\frac{\text{Telephone Numbers (TNs) Assigned}}{\text{Total Numbering Resources in Applicant's Inventory}} \times 100$  =  $\frac{84.08}{72.87}$  Cellular;  
Both %

Explanation:

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<sup>1</sup> A copy of this worksheet is required to be submitted to the Code Administrator; for audit purposes, it must be in the applicant's files.

<sup>2</sup> Report on all resources for the requested geographic area, including newly acquired codes.

<sup>3</sup> Definitions of terms may be found in the Glossary section of the Central Office Code (NXX) Assignment Guidelines.

<sup>4</sup> Net change in TNs no longer available for assignment in each previous month, starting with the most distant month as Month #1, and Month #6 as the current month.

<sup>5</sup> Forecast of TNs needed in each following month, starting with the most recent month as Month #1. In a jeopardy situation, only 6 months growth projection is required.

<sup>6</sup> To be assigned an additional CO Code (NXX) for growth, "Months to Exhaust" must be less than or equal to 6 months. (FCC 00-104, § 52.15 (g) (3) (iii)).

<sup>7</sup> Newly acquired numbers (see glossary) may be excluded from the utilization calculation (FCC 00-104, § 52.15 (g) (3) (ii)).

**CERTIFICATE OF SERVICE**

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 19<sup>th</sup> day of September, 2001, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Petition for Waiver filed today to the following:

\*Dorothy Attwood, Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-A848  
Washington, D.C. 20554

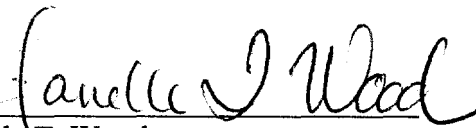
\*Diane Griffin Harmon  
Federal Communications Commission  
Common Carrier Bureau  
Network Services Division  
445 12<sup>th</sup> Street, S.W.  
Room 6-A207  
Washington, D.C. 20554

\*Marilyn Jones  
Federal Communications Commission  
Common Carrier Bureau  
Network Services Division  
445 12<sup>th</sup> Street, S.W.  
Room 6-A207  
Washington, D.C. 20554

\*Sanford Williams  
Federal Communications Commission  
Common Carrier Bureau  
Network Services Division  
445 12<sup>th</sup> Street, S.W.  
Room 6-A207  
Washington, D.C. 20554

\*Cheryl Callahan  
Federal Communications Commission  
Common Carrier Bureau  
Network Services Division  
445 12<sup>th</sup> Street, S.W.  
Room 6-A207  
Washington, D.C. 20554

Public Utilities Commission of Guam  
Suite 404, GCIC Building  
Post Office Box 862  
Hagatna, Guam 96932

  
Janelle T. Wood

\* Via Hand Delivery